A bill to be entitled

An act relating to procurement of personal property and services; creating s. 287.019, F.S.; defining "privatization"; requiring the head of a state agency, prior to the purchase, lease, or acquisition of commodities or contractual services by privatization, to conduct a business case evaluation of the proposed privatization; providing elements and components of the evaluation; requiring the head of a state agency, subsequent to the purchase, lease, or acquisition of commodities or contractual services by privatization, to conduct an evaluation of the privatization; providing evaluation criteria; requiring state agencies to establish a system for monitoring the performance of a privatization contractor and for monitoring the contractor's compliance with the terms and conditions of the privatization contract; requiring state agencies to conduct annual evaluations of the performance of privatization contractors and report their findings to the Legislature, the Office of Program Policy Analysis and Government Accountability, and the Auditor General; requiring the Office of Program Policy Analysis and Government Accountability and the Auditor General to periodically examine any privatization in order to assist the Legislature in evaluating whether expected savings and outcomes have been achieved through privatization; creating s. 14.204, F.S.; creating the Center for Efficient Government; providing purposes of the center;

providing for an oversight advisory board to oversee the activities of the center; providing for membership of the board; creating s. 110.1095, F.S.; requiring executive agencies to address the transition of employees affected by outsourcing initiatives; requiring agencies to develop job placement policies for such employees; requiring agencies to develop a reemployment and retraining assistance plan for employees; authorizing agencies to provide job skills retraining to any impacted employee who is not offered comparable employment within 1 year of separating from state employment; requiring agencies to coordinate the impact and transition of affected employees with the Agency for Workforce Innovation; requiring the coordination of services for state employees with Workforce Florida, Inc., and regional workforce boards throughout the state; requiring agencies to offer critical employee retention salary increases; authorizing agencies to use a percentage of the savings realized from an implemented outsourcing initiative as an employee recognition allocation to reward the employee or group of employees who proposed the initiative; requiring agencies to consider incorporating severance compensation provisions into outsourcing contracts; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 287.019, Florida Statutes, is created to read:

287.019 Privatization evaluation and assessment.--

(1) For the purposes of this section, "privatization" means entering into a contract with one or more private entities for the purchase, lease, or acquisition of any commodity or contractual service required by an agency of the state under this chapter when:

(a) It is maintained by the department that such commodity or contractual service can be provided in a more efficient manner by a private entity; and

(b) The expenditure by the contracting agency for the purchase, lease, or acquisition of commodities or contractual services exceeds $10 million annually.

(2) Prior to the purchase, lease, or acquisition of any commodity or contractual service required by an agency of the state under this chapter which meets the definition provided in subsection (1), the head of the state agency shall conduct a business case evaluation of the proposed privatization which shall specifically address the potential for the privatization to result in a verifiable cost savings. A business case evaluation for a privatization proposal shall contain the following elements:

(a) Description and rationale.--The description and rationale element shall contain the following components:

1. A description of the program or service to be privatized.

2. An analysis of the agency's current performance and

associated needs or problems with respect to the program or service that is the subject of the privatization proposal and proposed solutions.

3. The benefits, such as cost savings or program improvements, that are expected to result from privatization.

(b) Cost-benefit analysis.--The cost-benefit analysis element shall contain the following components:

1. An accounting of the current direct and indirect expenditures for the program or services for which privatization is proposed. Indirect costs, as determined by the agency, include, but are not limited to, providing executive direction, legal services, and administrative support services such as personnel, finance, and budgeting; program direction, monitoring, and other activities that are essential to operating a program but are not directly associated with providing a service; and the salaries, benefits, and expenses of the individuals overseeing the contractor for the privatization. Direct costs, as determined by the agency, include, but are not limited to, salaries and benefits of employees formerly providing the program or service.

2. An analysis demonstrating the potential savings or increased costs that are expected to occur as a result of privatization. The analysis shall include the identification of crucial factors that could affect the potential savings realized, the effect of changes in these factors on costs and benefits of the proposal, and a list of state assets that would be transferred to the contractor if the privatization plan is implemented.

3. If the proposed privatization will occur under a share-in-savings contract, a description of the methodology that will be used to calculate savings and payments to a contractor under such contract. For purposes of this section, a "share-in-savings contract" is an agreement in which an agency pays a contractor based on the financial benefits derived from the contractor's performance and which contains quantifiable baseline data that will be used to establish the basis upon which the percentage of savings paid to a contractor will be determined.

(c) Contract monitoring and contingency plans.--The contract monitoring and contingency plans element shall contain the following components:

1. The process the agency plans to use to monitor the performance of the privatization contractor and the estimated monitoring costs the agency will incur for this oversight function.

2. A contingency plan specifying actions that will be taken to address potential problems such as vendor prices exceeding anticipated levels, unexpected delays by the contractor in performing services by required deadlines, failure to meet performance expectations, or inability to meet obligations or abandonment of the contract.

(d) Public records access.--The public records access element shall contain the following components:

1. A list of public records issues pertinent to the proposed privatization, including whether any confidential or exempt records would be maintained by the contractor and the procedures that would be used to ensure that the contractor

maintains security and privacy of confidential or exempt records.

2. Agency plans to require the contractor to make available for inspection and review any program-related records that it produces or collects to the same extent and in the same manner as such records would be available from a state agency.

(3) If the business case evaluation conducted pursuant to subsection (2) indicates that the proposed privatization will result in a verifiable cost savings, the evaluation must ascertain whether the cost savings will be directly attributable to any of the following:

(a) Lower labor costs than that of the state agency.

(b) Reduced regulatory requirements.

(c) Reduced overhead.

(d) Increased flexibility with respect to the motivation, reward, and termination of employees.

(e) Access to better equipment than that available to the state agency.

(f) The ability to react more quickly to changing conditions than the state agency. If so, was this ability attributable to:

1. An ability to shift funds to pay unexpected expenses without the encumbrance of budget transfer authority under which the state agency must operate.

2. An ability to expand operations more quickly than the state agency.

<u>(g) Staffing flexibility, including the ability to obtain specialized expertise by contract or through the hiring of a consultant for one-time occasional projects.</u>

<u>(h) The avoidance of political factors, which may include the use of private-sector experts not aligned or associated with partisan political groups.</u>

<u>(i) The avoidance of prohibitive or excessive start-up costs needed to provide appropriate up-front funding for service infrastructure.</u>

<u>(4) One year after entering into a contract for the purchase, lease, or acquisition of any commodity or contractual service required by an agency of the state under this chapter, which meets the definition provided in subsection (1), the Center for Efficient Government shall conduct an evaluation of the results of the privatization to determine whether the privatization yielded or failed to yield the projected cost savings based on the evaluation conducted pursuant to subsections (2) and (3) prior to entering into the contract and an evaluation of the results of the privatization during its first year which shall specifically address whether the privatization resulted in a verifiable cost increase. If it is determined that the privatization resulted in a verifiable cost increase, the evaluation must ascertain whether the cost increase was directly attributable to any of the following:</u>

<u>(a) Reduced public accountability. If so, did the lack of public accountability or reduced public accountability manifest itself in increased costs resulting from:</u>

1. Lack of public access to service and financial records maintained by the provider.

2. Variations in the quality of services being provided to citizens.

3. Entering into a contract the term of which was too lengthy, thus precluding the ability to adjust to a changing condition or circumstance.

4. A resultant inability to gauge or monitor poor performance. In an instance where such poor performance resulted in termination of a contract, was increased cost and/or hardship incurred because:

a. The contractor was a sole-source provider of a service; or

b. The contractor was providing a service in which no service disruptions could be tolerated.

(b) Service quality problems which include, but are not limited to:

1. Providing service to only those who do not have many needs, commonly known as "creaming."

2. Identifiable cost-cutting measures that result in cost increases including, but not limited to, frequent replacement of poorly maintained equipment.

3. Service quality problems that arise from contract deficiencies which include, but are not limited to:

a. Poorly defined responsibilities of the contractor.

b. Lack of service quality performance measures.

c. The absence of penalties for nonperformance.

d. The absence of contingency plans.

(c) Higher long-term costs. If so, did the higher long-term costs result from:

1. The submission by the contractor of a low initial bid in order to obtain the contract followed by substantially increasing costs in subsequent years when the agency previously providing the service no longer has the staff or authority to perform the service.

2. The acceptance of a contract bid that appears low but is in actuality higher than the in-house costs of the agency due to the agency's inability to determine the actual cost of providing services in-house because of agency accounting systems which do not allocate all direct and indirect costs to services.

3. Failure in the request for proposals that solicited the bid for the service to mandate that the contractor achieve a specified level of savings.

4. Failure of the contract to limit future price increases.

(d) Workforce issues including, but not limited to:

1. Employee layoffs resulting in morale problems.

2. Union challenges to privatization.

3. Disruptions resulting from bumping rights when affected employees assume jobs in other areas.

4. Failure of an agency's ability to meet Equal Employment Opportunity goals and subsequent discrimination challenges resulting from inordinate numbers of minority groups being removed from state payrolls.

5. Failure in a contract to require the contractor to guarantee jobs and wages for a limited time period.

Section 2. (1) No later than January 1, 2006, each state agency shall establish a system for monitoring the performance of a contractor with whom the state has entered into a contract for the purchase, lease, or acquisition of commodities or contractual services by privatization as defined in s. 287.019(1), Florida Statutes, and for monitoring the contractor's compliance with the terms and conditions of the privatization contract.

(2) Beginning January 1, 2006, each state agency, in coordination with the Center for Efficient Government, shall conduct an annual evaluation of the performance of any contractor with whom the state has entered into a contract for the purchase, lease, or acquisition of commodities or contractual services by privatization exceeding $10 million and report its findings to the Legislature, the Office of Program Policy Analysis and Government Accountability, and the Auditor General.

(3) Beginning January 1, 2006, the Office of Program Policy Analysis and Government Accountability and the Auditor General shall be required to periodically examine any privatization exceeding $10 million in order to assist the Legislature in evaluating whether expected savings and outcomes have been achieved through privatization.

Section 3. Section 14.204, Florida Statutes, is created to read:

14.204 Center For Efficient Government; creation; purpose; oversight advisory board.--

(1) The Center for Efficient Government is created and

administratively housed in the Department of Management Services.

(2) The purpose of the center is to improve the way state agencies deliver services to Florida's citizens. In furtherance of this purpose, the center shall:

(a) Review past outsourcing projects for best business practices.

(b) Review existing outsourcing plans within the state agencies to ensure compliance with center standards and business case criteria, execution of effective contracts with vendors, and implementation of successful change management.

(c) Provide to the President of the Senate, the Speaker of the House of Representatives, and the Governor, by July 1, annually, a written report containing a list of outsourcing projects and initiatives that can be developed over the next 3-year period.

(d) Maintain a database that contains information about initiatives which are being performed by contractors to include, but not be limited to, the lead agency name and description of program or service being outsourced, names of contractors and subcontractors on contract, projected and actual completion dates by project phase, a description of performance measures contained in the contract, and actual performance measures and projected costs and revenues associated with the contract.

(e) Develop and implement a program to transition impacted employees. This program should recognize their contributions to the state and the state's commitment to minimize the personal impact on such employees while implementing beneficial programs that reduce the cost of government for all citizens of the state. The center shall provide recommendations for this program to the Governor on an ongoing basis.

(3)(a) The Center for Efficient Government Oversight Advisory Board is established for the purpose of reviewing and evaluating the performance of the center in carrying out its duties under this section and investigating and evaluating any issues relevant to the center's review of past outsourcing projects and existing outsourcing plans or any other activities of the center the board deems appropriate. The center shall make reports as it deems necessary to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Budget Commission concerning its findings and recommendations. The board is composed of the following members:

1. The Chief Financial Officer, who shall serve as chair of the board.

2. A member of the Senate appointed by the President of the Senate, who shall be a member of the majority party.

3. A member of the Senate appointed by the President of the Senate, who shall be a member of the minority party.

4. A member of the House of Representatives appointed by the Speaker of the House of Representatives, who shall be a member of the majority party.

5. A member of the House of Representatives appointed by the Speaker of the House of Representatives, who shall be a member of the minority party.

6. The Secretary of the Department of Management Services.

7. The Secretary of Health.

8. The Executive Director of the Agency for Workforce Innovation.

9. The Executive Director of the Department of Revenue.

(b) Board members are entitled to receive per diem and travel expenses as provided in s. 112.061, Florida Statutes, while carrying out official business of the board and shall be reimbursed by their respective agencies in accordance with chapter 112.

(4) All agencies are directed to render assistance, resources, and cooperation to the center.

Section 4. Section 110.1095, Florida Statutes, is created to read:

110.1095 Transition of employees affected by outsourcing initiatives.--

(1) Executive agencies shall address the transition of all affected employees in the business case for any outsourcing proposal submitted to the Center for Efficient Government under s. 14.204 and through the procurement of such outsourced services.

(2) Each agency shall develop job placement policies for employees affected by an outsourcing initiative. Policies shall include, but not be limited to, requiring that each impacted state employee be interviewed by the contractor and considered for job placement within the company.

(3) Each agency shall develop a reemployment and retraining assistance plan for employees who are not retained by the agency or employed by the contractor. Agencies may provide job skills retraining to any impacted employee who is not

offered comparable employment within one year of separating from state employment. Agencies shall coordinate the impact and transition of affected employees with the Agency for Workforce Innovation. The agency shall also coordinate services for state employees with Workforce Florida, Inc., and regional workforce boards throughout the state.

(4) In accordance with existing statutory authority, agencies shall, within their approval budgets, offer critical employee retention salary increases in order to retain those individuals identified as critical to successful transition of the outsourced service to the contractor.

(5) In accordance with existing statutory authority, agencies may use a percentage of the savings realized from an implemented outsourcing initiative as an employee recognition allocation to reward the employee or group of employees who proposed the initiative.

(6) Agencies shall consider incorporating severance compensation provisions into outsourcing contracts requiring the vendor to create an employee severance pay pool as part of the contract. Employees who are not offered employment with the state, the vendor, or another entity would be provided severance pay.

(7) The Department of Management Services, Division of Human Resource Management, and the Center for Efficient Government shall provide technical assistance to the agencies, as requested, to facilitate development of the measures set forth herein.

(8) Agencies are directed to implement the policies and

<u>programs set forth in this section.</u>

Section 5. This act shall take effect upon becoming a law.